

REMARKS

The Examiner rejected Claims 1-3, 7-9, 13-15 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,559,878 (hereinafter "Keys et al. '878"). The Examiner also rejected dependent Claims 4, 10, and 16 under 35 U.S.C. 103(a) as being unpatentable over Keys et al. '878 in view of U.S. Patent No. 5,278,898 (hereinafter "Cambray et al. '898"). The Examiner also rejected dependent Claims 5-6, 11-12, 17 and 18 under 35 U.S.C. 103(a) as being obvious over Keys et al. '878 in view of U.S. Patent No. 6,333,980 (hereinafter "Hollatz et al. '980"). The Applicants have amended Claims 2-6, 8-12, and 14-18. The Applicants submit that these minor amendments and corrections herein are made without prejudice as to patentability, and that no new matter has been added.

Claims 1-3, 7-9, 13-15 Are Not Obvious Over Keys et al. '878.

The Examiner rejected Claims 1-3, 7-9, 13-15 under 35 U.S.C. 103(a) as being unpatentable over Keys et al. '878. The Applicants respectfully disagree.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); *see also* MPEP 706.02(J).

No suggestion or motivation to modify the references or combine reference teachings.

The Applicants respectfully submit that the Examiner has failed to meet the first element of a prima facie case for obviousness. First, there is no suggestion or motivation, either in the cited patents themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The Examiner has the burden of showing, as such, and has not met it here.

Keys et al. '878 does not disclose a method of tracking calls received within a call center. Keys et al. '878 is concerned with returning telephone calls unable to be answered during peak calling periods and obtaining necessary information to do so. Keys et al. '878, abstract. Keys et al. '878 solves this problem by automatically answering the excess calls and gathering sufficient information to permit manned callbacks when time and equipment are available. Keys et al. '878, col. 1, lines 36-37. This is accomplished by use of an automatic phone call answering and scheduling system 70 (a voicemail system). Keys et al. '878, FIG. 1. The Applicants were concerned with a more efficient method of routing (tracking) calls using skills based routing in a call center having a functionally integrated ACD server and IVR server. The two cited patents are clearly based on very different call center concepts and thus, neither explicitly suggests modifying the other.

Not only is there nothing explicit in the cited patents that would suggest the modification, there is also nothing implicit suggesting modifying the cited patents, as the teachings, knowledge of one of ordinary skill in the art, and nature of the problem to be solved, as a whole, would not suggest doing so to those of ordinary skill in the art as is required in MPEP 2143.01 and *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). As can be seen by reviewing Applicants' "Background of the Invention," the Examiner has attempted to use art that Applicants have inherently stated as being insufficient, *i.e.*, Keys et al. '878 lacks functional integration among ACD and IVR components (described in detail later). *See* Keys et al. '878, FIG. 1. Additionally, neither of the two prior art patents teach combining the patents, nor does the Examiner state why one with ordinary skill in the art would be willing to do so. Anything less than massive modifications to Keys et al. '878 would not solve the Applicants' problem. The combined teachings, knowledge of one of ordinary skill in the art, and nature of the problem to be solved, as a whole (tracking calls received within a call center), do not suggest modifying the cited patents.

Second, even if the cited patents somehow could be combined or modified, this still is not sufficient to establish a *prima facie* obviousness unless the prior art also suggests the desirability of the combination. MPEP 2143.01. Not only is there no suggestion as to the desirability of the combination, discussed above, but also the combination would not in fact be desirable, as will be discussed *infra*.

Third, even assuming a motivation and an ability to combine the patents, MPEP 2143.01 states: "the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish *prima facie* obviousness." And yet, nothing else has been shown by the Examiner.

No reasonable expectation of success.

The Examiner has also failed to meet the second element of a *prima facie* case for obviousness because there must be, and there is not in this present case, a reasonable expectation of success. Clearly, from the discussion above and a quick examination of the figures of the patents, one would realize that the modification of the prior art patent will not produce the Applicants' invention. The application and the Keys et al. '878 patents are so different in their design and purpose, as stated above, Keys et al. '878 would require massive modifications. Therefore, the second element of a *prima facie* case of obviousness has not been satisfied.

The cited patent does not teach or suggest all the claim limitations.

Finally, the Applicants respectfully submit that the Examiner has failed to meet the third element of a *prima facie* case for obviousness which requires all claimed limitations be taught or suggested. For example, Claim 1 features a method of tracking calls whereby a call is received within a call center switch that is connected to a call center via a host interface link (HIL). The call center has an automatic call distributor (ACD) server and interactive voice response (IVR) server, which are functionally integrated with the ACD server. The call is routed to the IVR server of the call center and responses are solicited from the caller to determine a requested type of service and what skills are required for answering a call. A route request based on an HIL protocol is determined within the call center and includes a new extension number and HIL messages. The call is then, based on the route request, routed back to the call center and to an agent via the ACD server and HIL link such that the call can be tracked while in the call center and in queue. Keys et al. '878, as stated above, merely describes a method for controllably and responsively spreading telephone answering activity initiated during peak periods into the periods of lesser activity while maintaining a contact with callers who might otherwise hang up and be lost. See Keys et al. '878, abstract.

The Applicants respectfully submit that Keys et al. '878 does not describe the Applicants' invention as defined in the claims. Keys et al. '878, as a minimum, is overcome for the following reasons: 1) the patent does not disclose an interactive voice response (IVR) server that is functionally integrated with the ACD server; 2) the patent does not disclose soliciting responses from the caller to determine a requested type of service and what skills are required for answering a call; 3) the patent does not disclose determining within the call center a route request based on an HIL protocol that includes a new extension number and HIL messages; and 4) the patent does not disclose routing the call based on the route request.

With respect to Independent Claims 1, 7, and 13, the Examiner states that:

Keys et al. teach[es] receiving a call at a call center via a Host Interface Link (HIL) . . . , [and] an automatic call distributor (ACD) 20

Office action, para. 3, page 2.

The Examiner further states that:

With respect to an IVR, though Keys et al. *does not specifically recite an IVR*, Col. 9, lines 39-46 indicates the use of an IVR. This is in particularly instructive since IVRs are usually the front end of an ACD.

Office action, para. 3, page 2 (emphasis added).

Applicants respectfully submit that the Examiner's statement does not show that Keys et al. '878 teaches or suggests all claimed limitations. As featured in Independent Claims 1, 7, and 13, the cited patent does not disclose an interactive voice response (IVR) server that is functionally integrated with the ACD server. It would appear difficult for the Examiner to maintain the position that Keys et al. 878 discloses an "IVR server that is functionally integrated with an ACD server" when the Examiner specifically acknowledges that the reference "does not specifically recite an IVR." The automatic phone call answering and scheduling system identified in the Examiner's reference (col. 9, lines 39-46) is not an IVR as defined in the application, but is instead a smart voice mail and return-call scheduling system: "[p]rompting a caller (whose call has been automatically answered due to excessive traffic) by playing an outgoing message based on Trunk Group, DNIS, ANI and time of day to [provide] specific [(return call)] information for on-line recording." Keys et al. '878, col. 9, lines 39-46.

The Applicants clearly describe an aspect of what is meant by an IVR that is functionally integrated: "Scripts for an IVR system and ACD routing are designed and maintained in the construction editor . . . [, the] construction editor allows the user to build advanced IVR features that seamlessly integrate into the ACD system" Application, page 10, lines 22-34. Clearly, nothing to this effect is disclosed in Keys et al. '878. In fact, the Keys et al. '878, FIG. 1 and 4 show that the voice mail system 70 and ACD 60 are functionally separate units.

The Examiner further states:

Keys et al. '878 teaches. . . soliciting responses from the caller (Col. 9, lines 39- 46), new extension . . . [,] and tracking of the call (see Col. 10, line 15[]). Though Keys et al. is *not specific as to what responses are solicited* (like type of service or skills), such questions *would have been obvious* to one of ordinary skill in the art.

Office action, para. 3, page 2 (emphasis added).

Applicants respectfully submit that the Examiner appears to be mistaken. The patent does not disclose soliciting responses from the caller to determine a requested type of *service* and what *skills* are required for answering a call. Keys et al. '878, however, specifically discloses only soliciting the "name" of the caller. Keys et al. '878, col. 7, line 17. A request for the type of service or skills would not be obvious to one of ordinary skill in the art because that information would be unnecessary in the Keys et al. '878 system. Keys et al. '878 is geared for a telemarketing system -- requesting from a caller the reason for the call would be counterproductive to "making the sale." The purpose of the Keys et al. '878 automatic phone call answering and scheduling system 70 is to provide the ability to return each incoming call in a partially manned system by obtaining the name of the caller. Keys et al. '878, col. 7, lines 13-18. The answering and scheduling system 70, identified as an IVR by the Examiner, merely functions to play a message requesting the name of the caller in order to return the call to the customer when an agent becomes available (Keys et al. '878, col. 7, lines 13-18) and assign that outgoing call to the first available agent station (Keys et al. '878, col. 7, lines 61-62). The return of the call and assignment to an agent is based merely on a first-in-first-out procedure, regardless of any required skill. Col 8, lines 30-34.

As stated, Keys et al. '878 can best be described as the type used for telemarketing activities. Unlike the systems described by the Applicants, telemarketing is predicated on mass marketing a product or group of products which would not necessarily require agents with individual specialized skills. Even if special skills were required, the phone number provided to the customer in the advertisement (DNIS) generally sufficiently directs the phone call to the proper group of telemarketing agents. Also, as stated above, merely disclosed is that customers are provided to the next available agent on a first-in first-out basis without regard to any stated skill. *See generally*, Keys et al. '878, col. 6, lines 47-52.

Additionally, the patent does not disclose determining within the call center a route request based on an HIL protocol that includes a new extension number and HIL messages, and routing the call based on the route request, as featured in Claims 1, 7, and 13. Again, as stated above, the answering and scheduling system is strictly based on first-in first-out. The only "skill" disclosed as being required by the telemarketer, obtained from the customer, is the knowledge of the customer's name and phone number, which is not a skill as defined in the application. No route request, as described by the Applicants, is required.

Regarding specifically Claim 7, in addition to features absent from the patent described above, the Examiner does not assert that Keys et al. '878 teaches or suggests establishing the skills that will be available within the call center by inputting skills data, including a listing of skills and proficiency levels for each skill, via an automatic call distributor (ACD) manager, or setting up agents that are used within the call center by listing each agent within the ACD manager and selectively mapping skills to each individual agent via the ACD manager and corresponding to what types of skills the agents possess, as additionally featured. *See* Office action, para. 3, page 2. As neither of these features appear necessary to the Keys et al. '878 system, it would not be obvious to utilize these features in said system.

Regarding Claim 13, the Examiner further states that:

Though SQL is not mentioned by Keys et al., SQL servers are notoriously old in the art. It would have been obvious to one of ordinary skill in the art to have used whatever type of server was deemed necessary.

Office action, para. 3, page 2.

The Examiner's assertion implies no combination of a server with an SQL server would ever be a patentable combination. Claim 13 is similar to Claim 1 except that it additionally features an SQL server that stores data relating to call routing, whereby the method of tracking calls received within a call center includes routing the call based on the route request . . . such that the data can be updated via the SQL server. The use of a SQL server in Keys et al. '878 would be unnecessary because the method of assigning routing is merely first-in-first-out to the first available agent. Use of an SQL server in Keys et al. '878 to store data relating to call routing would be frivolous. Thus, it is not featured (taught or suggested) in Keys et al. '878.

The Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness because, as a minimum, he has neither shown that Keys et al. '878 teach or suggest all the claim limitations, nor has he shown some suggestion or motivation, either in the reference or in the knowledge generally available to one of ordinary skill in the art, to modify Keys et al. '878, as required in MPEP 2143. Accordingly, Independent Claims 1, 7, and 13, have been shown to be allowable and define over the cited art. Dependent Claims 2-3, dependent upon Claim 1 (shown to be allowable), Dependent Claims 8-9, dependent upon Claim 7 (shown to be allowable), and Dependent Claims 14-15, dependent upon Claim 13 (shown to be allowable), are correspondingly also shown to be allowable. Dependent Claims 2-3, 8-9, and 14-15 are also independently novel and nonobvious.

Regarding Claim 2, the Examiner states that "though Keys et al. '878 is silent about a link failure, they discuss the period of time a message will stay in a queue (Col. 6, lines 55-61)." Office action, para. 4, page 2. Applicants respectfully submit, that the Examiner appears to be mistaken. First, no mention is made in the patent of the existence of a HIL link failure timer. Second, the patent passage does not discuss "specifying . . . the period of time that an HIL link will queue messages after a link has failed, as featured in Claim 2, but instead describes that when the number of calls in the queue exceed a predetermined number, the additional calls are directed to the automatic phone call answering and scheduling system 70. Note, this argument also applies with regard to rejection of Claims 8 and 14.

With respect to Claim 3, the Examiner states that "such a claim limitation is inherent." Office action, paragraph 1, page 3. The Applicants have revised the claim to include the steps of determining what types of information a call center host needs for different types of calls, and ensuring that calls are routed to a route request that will contain a proper profile of information. This amendment also applies to Claims 9 and 15.

The Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness because, as a minimum, he has neither shown that Keys et al. '878 teach or suggest all the claim limitations, nor has he shown some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify Keys et al. '878, as required in MPEP 2143. Accordingly, Dependent Claims 1-3, 7-9, and 13-15, have been shown to be allowable and define over the cited art.

Claims 4, 10, and 16 Are Not Obvious Over Keys et al. '878 in view of Cambray et al. '898.

The Examiner rejected Claims 4, 10, and 16 under 35 U.S.C. 103(a) as being unpatentable over Keys et al. '878 in view of Cambray et al. '898.

The Applicants respectfully disagree. Dependent Claim 4, dependent upon Claim 1 (shown to be allowable), Dependent Claim 10, dependent upon Claim 7 (shown to be allowable), and Dependent Claim 16, dependent upon Claim 13 (shown to be allowable), are correspondingly also shown to be allowable. Dependent Claim 4, 10, and 16 are also independently novel and nonobvious.

The Examiner states that:

With respect to claim 4, 10 and 16, it is believed that Col. 6, line 45-Col. 7, line 7 satisfy these claim limitations. However, if this is not agreed

Office action, para. 3, page 3.

The referenced passage (col. 6, line 45-col. 7, line 7) of Keys et al. '878 does not satisfy the Examiner's belief. Claims 4, 10, and 16 feature the step of prioritizing a call based on one of

at least: number dialed (DNIS), number dialed from (ANI), and length of time a call is in queue. Prioritization of a call in Keys et al. '878 is solely first-in-first-out in both the first mode (transfer of first-in-line caller directly to first available agent) and second mode (transfer of calls exceeding a predetermined number or experiencing excessive wait time to the smart voice mail and return-call scheduling system). Keys et al. '878, col. 6, lines 50-52 & col. 8, lines 30-34.

The Examiner further states that:

With respect to claim 4, 10 and 16 . . . note Col. 3, lines 5-18 of Cambray et al. It would have been obvious to one of ordinary skill to have incorporated such limitations as recited in claims 4, 10 and 16 and taught by Cambray et al. into the method of Keys et al. as an obvious means of prioritizing calls.

Office action, para. 3, page 3.

The Applicants also respectfully disagree. As previously stated, to establish a prima facie case of obvious, there must be: 1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; 2) a reasonable expectation of success; and 3) the prior art reference (or references when combined) must teach or suggest all the claim limitations.

There is no suggestion or motivation to combine Cambray et al. '898 with Keys et al. '878 in either of the patents. Nor does the Examiner assert a reason to combine the patents. Additionally, Cambray et al. '898 does not teach or suggest all claim limitations. In Cambray et al. '898, priority categories within a hold queue are based on likelihood of the caller hanging up. Cambray et al., col. 1, lines 17-19, and col. 5, lines 15-31. The passage referenced by the Examiner merely describes a hold queue 18 which stores a plurality of call records 20 which may include "a second portion 24 containing predetermined indicia from which call prioritizing may be accomplished." Cambray et al. '898, col. 3, lines 11-13. The passage further states that "[t]he indicia includes an indication of 'age' of the call, that is, the amount of time that the call has been 'on hold,' although other types of indicia are contemplated by the present invention." Cambray et al. '898, col. 3, lines 13-18. Clearly, the Examiner's cited patent does not teach or suggest

prioritizing a call based on either the number dialed (DNIS) or number dialed from (ANI)--a broad statement in the patent that the patent invention contemplates other types of indicia does not disclose prioritizing using DNIS or ANI. Additionally, as amended, the claims also feature the step of escalating the priority of a call after it has been in queue for a predetermined period. This feature is also not shown in the patents.

The Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness because, as a minimum, he has neither shown that Keys et al. '878 nor Cambray et al. '898 teach or suggest all the claim limitations, nor has he shown some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art, to modify Keys et al. '878, as required in MPEP 2143. Accordingly, Dependent Claims 4, 10, and 16, have been shown to be allowable and define over the cited art.

Claims 5-6, 11-12, and 17-18 Are Not Obvious Over Keys et al. '878 in View of Hollatz et al. '980.

The Examiner rejected Claim 5-6, 11-12 and 17-18 under 35 U.S.C. 103(a) as being obvious over Keys et al. '878 in view of Hollatz et al. '980.

The Applicants respectfully disagree. Dependent Claims 5-6, dependent upon Claim 1 (shown to be allowable), Dependent Claims 11-12, dependent upon Claim 7 (shown to be allowable), and Dependent Claims 17-18, dependent upon Claim 13 (shown to be allowable), are correspondingly also shown to be allowable. Dependent Claims 5-6, 11-12 and 17-18 are also independently novel and nonobvious.

The Examiner states that:

With respect to these claims (5-6, 11-12 and 17-18), Col. 5, line 25- Col. 7, line 14 of Hollatz read on such claim limitations. Such claim limitations as recited in these claims would have been obvious to one of ordinary skill in the art as shown by Hollatz et al. It would have been obvious to one of ordinary skill in the art to have proficiency levels for agents and routing calls to the best qualified agent and able agent as taught by Hollatz et al. and to

incorporate such teachings into the Keys et al. method in order to better serve customers.

Office action, para. 5, page 3.

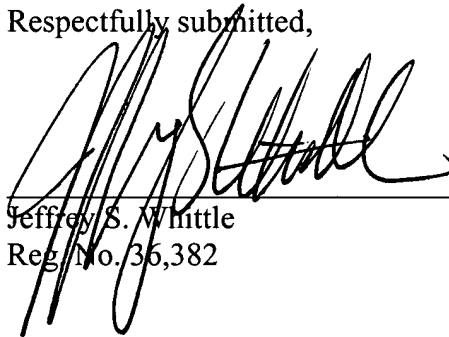
Applicants respectfully assert that the patent passage does not satisfy the Examiner's premise. Hollatz et al. '980 discloses assigning a call-skill indicator based on caller identification information such as DNIS information, ANI information, telephone trunk identification or information provided by the caller. Hollatz et al. '980, col. 6, lines 38-41. Claims 5, 11, and 17 features the step of routing the call to an agent that has the highest proficiency level for the skills required for answering the call based on the *requested type of service*. The identified passage does not describe *routing* the call based on a service *requested* by the caller. Additionally, regarding Claims 6, 12, and 18, as amended, Hollatz et al. '980 does not teach or suggest that if no agents are available, rerouting the call to a remote site having an available agent with the skills required for the requested type of service, but merely holds the calls in queue when no agent with necessary skills are available. Hollatz et al. '980, col. 6, line 58 to col. 7, line 4.

The Applicants respectfully submit that the Examiner has not established a prima facie case of obviousness because, as a minimum, he has neither shown that Keys et al. '878 nor Hollatz et al. '980 teach or suggest all the claim limitations, nor has he shown some suggestion or motivation, either in the patents or in the knowledge generally available to one of ordinary skill in the art, to modify Keys et al. '878, as required in MPEP 2143. Accordingly, Dependent Claims 5-6, 11-12, and 17-18, have been shown to be allowable and define over the cited art.

CONCLUSION

In view of the amendments and remarks set forth herein, Applicants respectfully submit that the application is in condition for allowance. Accordingly the issuance of a Notice of Allowance in due course is respectfully requested.

Respectfully submitted,



Jeffrey S. Whittle
Reg. No. 36,382

Date: _____

9/4/03

BRACEWELL & PATTERSON, L.L.P.
P.O. Box 61389
Houston, Texas 77208-1389
Telephone: (713) 221-1185
Facsimile: (713) 221-2141

1566122.3